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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
BETHANIA RODRIGUEZ, : ECF  
Individually and on Behalf of All Other : 15 Civ. 9817(VEC)  
Persons Similarly Situated, :  
: Plaintiff, :  
: :  
-against- :  
: :  
NEW YORK FOUNDATION FOR SENIOR :  
CITIZENS HOME ATTENDANT SERVICES, INC., :  
LINDA R. HOFFMAN and JOHN DOES #1-10, :  
: :  
: Defendants. :  
-----X

**DECLARATION OF MICHAEL TAUBENFELD**

**FILED IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION  
TO COMPEL ARBITRATION AND DISMISS**

Dated: New York, New York  
April 12, 2016

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LAI CHAN, HUI CHEN, and XUE XIE,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

- against -

CHINESE-AMERICAN PLANNING  
COUNCIL HOME ATTENDANT  
PROGRAM, INC.,

Defendant.

Case No.: 15-CV-09605 (KBF)

**DECLARATION OF MICHAEL  
TAUBENFELD**

MICHAEL TAUBENFELD hereby declares the following pursuant to 28 U.S.C. §1746:

1. I am an attorney associated with Serrins Fisher LLP, which, along with the Urban Justice Center and Edward Tuddenham, represents Plaintiffs in the above-captioned action, and as such I am familiar with the facts and circumstances of the within action to the extent set forth herein. I submit this declaration in opposition to Defendant's motion to compel arbitration.

**Nature of the Action**

2. Plaintiffs Lai Chan, Hui Chen and Xue Xie are home care aides employed by Defendant Chinese-American Planning Council Home Attendant Program, Inc. to care for elderly individuals in and around New York City. (See, Plaintiffs' Amended Complaint ¶15 attached as **Exhibit 1**). Plaintiffs typically worked 24-hour shifts, caring for elderly individuals in the day and night, and often working as much as 120 hours a week.

3. Although Plaintiffs normally worked 24-hour shifts, Defendant generally paid them for a maximum of 12 hours of work per day. Defendant paid Plaintiffs at a rate of \$10.00 per hour for their weekday hours and \$11.10 for their weekend hours, plus a per diem rate of \$16.95 when they worked a 24-hour shift. (**Exhibit 1**, Amended Compl. ¶¶ 44,46,49)

Defendant never paid Plaintiffs time-and-a-half for their overtime hours or spread-of-hours payments even though Plaintiffs worked a spread-of-hours of more than 10 hours a day. Nor did Defendant pay Plaintiffs for mandatory training or provide Plaintiffs with proper wage statements. (**Exhibit 1**, Amended Compl. ¶¶54,55,73)

4. In response to these systematic violations, on March 11, 2015, Plaintiffs brought this action individually and on behalf of approximately 1,000 home care aides in the Supreme Court of the State of New York against Defendant for failure to pay under the NYLL (1) minimum wages, (2) overtime wages, (3) spread-of-hours wages, (4) straight time wages; (5) mandatory training hours; and (6) for failure to provide a proper wage statement. In addition, since Defendant regularly failed to pay Plaintiffs for each hour they worked, Plaintiffs also asserted claims on a representative basis for violations of the NY Home Care Worker Wage Parity Act, N.Y. Public Health Law § 3614-c (“Wage Parity Act”), and the Fair Wages for New Yorkers Act (“Living Wage Law”), Administrative Code for the City of New York § 6-109, both of which required Defendant to pay Plaintiffs a set wage of up to \$10 an hour for each hour Plaintiffs worked. Because Defendant entered into contracts with the HRA requiring it to pay Plaintiffs in accordance with the Wage Parity Act and Living Wage Law, and Defendant failed to pay Plaintiffs in accordance with those laws, Plaintiffs asserted claims as third-party beneficiaries of those contracts. Finally, Plaintiffs also alleged on a representative basis that Defendant was unjustly enriched by its failure to pay Plaintiffs in accordance with those laws.

#### **Martin F. Scheinman, Esq.’s Fees**

5. On January 11, 2015, I contacted the office of Martin F. Scheinman, Esq. to request a schedule of Mr. Scheinman’s fees for mediation and arbitration. I was advised by one of

Mr. Scheinman's employees that Mr. Scheinman charges for a mediation \$950 per hour with a minimum of six hours, plus \$350 administrative fee, for a minimum total of \$6,050.

6. I was further advised by Mr. Scheinman's employee that Mr. Scheinman charges for arbitration a minimum of \$2,700 a day for a six hour a day.

**Exhibits**

7. Attached as Exhibit 1 is Plaintiffs' Amended Complaint.
8. Attached as Exhibit 2 is the order and decision of the Supreme Court of the State of New York, dated September 9, 2015.
9. Attached as Exhibit 3 is Letter from 1199SEIU United Healthcare Workers East Union to Martin F. Scheinman, Esq., dated December 11, 2015.
10. I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief, and I am aware that should any of the above be materially false, I may be subject to a criminal penalty.

Executed on January 15, 2016  
\_\_\_\_\_  
/s/  
MICHAEL TAUBENFELD